

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 DARRELL WOODFORD,

7 Defendant.
8 -----x

18-CR-654 (KAM)

United States Courthouse
Brooklyn, New York

January 8, 2021
9:30 a.m.

9 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
VIA TELECONFERENCE
10 BEFORE THE HONORABLE KIYO A. MATSUMOTO
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript
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GEORGETTE K. BETTS, RPR, FCRR, CCR
Official Court Reporter

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1 THE COURT: I think we can proceed then. Would you
2 like to the call case, please.

3 THE LAW CLERK: Sure. Good morning. This is a
4 criminal status conference for a motion for post-conviction
5 presentencing release. Docket number 18-CR-654, in the United
6 States versus Daniel Woodford.

7 Counsel --

8 THE COURT: Darrell. Sorry, it's Darrell Woodford.

9 THE LAW CLERK: Excuse me. Darrell Woodford,
10 apologies.

11 Counsel, can you please state your name for the
12 record.

13 MS. REID: Yes, good morning, Your Honor. Erin Reed
14 and Temidayo Aganga-Williams for the government.

15 THE COURT: Good morning. Thank you.

16 MS. REID: Thank you.

17 MS. GLASHAUSSE: Good morning, Your Honor. Allegra
18 Glashausser representing Mr. Woodford, who is also on the line
19 with us.

20 THE COURT: All right. Good morning. Thank you.

21 I just want to first address Mr. Woodford and just
22 confirm that he has no objection to proceeding by telephone in
23 light of the COVID pandemic, the CARES Act and an order of our
24 chief judge which authorizes courts to conduct proceedings by
25 telephone in the interest of justice.

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1 Do you have any objection, Mr. Woodford?

2 THE DEFENDANT: No, thank you. Good morning,
3 though, Your Honor.

4 THE COURT: All right. I just want to let the
5 parties know that I have read all of the submissions related
6 to this motion including Ms. Glashausser's December 18th
7 motion, the government's response of December 23rd which
8 attached certain BOP health clinic records regarding
9 Mr. Woodford, and Ms. Glashausser's January 7th letter
10 updating the Court of Mr. Woodford's unfortunate ongoing
11 symptoms as a result of his COVID bout.

12 Is there anything Ms. Glashausser wishes to add
13 beyond the January 7th letter?

14 MS. GLASHAUSSER: I have no further written
15 submissions, Your Honor, but I am happy to update the Court
16 about Mr. Woodford's current situation --

17 THE COURT: Yes.

18 MS. GLASHAUSSER: -- having just spoken to him.

19 THE COURT: Yes.

20 MS. GLASHAUSSER: Okay. Thank you, Your Honor.

21 So in line with my letter that I submitted
22 yesterday, Mr. Woodford is still experiencing lingering
23 symptoms from the Coronavirus. He is exceedingly tired, his
24 body is still aching, and he still is lacking his sense of
25 taste and smell. He is, it seems, improving which is very

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1 positive, but this is now about a month since his positive
2 test diagnosis. This has been a fairly long time that he's
3 been experiencing these symptoms and he's really been unable
4 to do anything to improve them where he is.

5 He basically describes that he is just stuck in a
6 dirty cell, sleeping all day. You know, he's not given
7 cleaning supplies, he has no fresh air and he doesn't have
8 clean water except when he's able to melt ice, which is hard
9 as it is cold. So this is --

10 THE COURT: Are you saying even though he's back in
11 general population, inmates are not able to access water?

12 MS. GLASHAUSSER: My understanding is they're able
13 to access ice during the 30 minutes that they are let out of
14 their cells each day, but that's a water -- there's not a
15 clean water source other than buying liquids through
16 commissary. He does get a serving of milk each morning I
17 believe to go along with cereal, but isn't otherwise provided
18 with any sort of bottled liquids that don't have this problem
19 of the water coming out brown. And that's something that's
20 not just Mr. Woodford reporting it, that's something that many
21 of our clients at MDC, many of the Federal Defenders' clients
22 have been reporting the difficulty with the water. So it is
23 just not at all an environment that is conducive to him
24 getting better. And he is very grateful, obviously, that he
25 is not getting worse.

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1 As I said, he does seem to be gradually improving
2 and he is very grateful that the court ordered the doctor's
3 visit and he was actually able to see a doctor. Aside from
4 those two things, it's really a quite grim situation at MDC
5 and it's difficult to listen to a client ask me medical
6 questions when I obviously don't have the answers. Like, you
7 know, how he should -- what he should do to try to make these
8 symptoms go away, how long it might last, when he might be
9 able to smell and taste things again, which has extraordinary
10 mental health effects that Mr. Woodford had described to me
11 and then I happened to read about in the New York Times about
12 a week later, that it really causes a disorientation when
13 you're lacking those senses, and these are things that he
14 would be able to address if he were temporarily released and
15 able to recover in the care of doctors, medical professionals
16 and in his grandmother's home.

17 THE COURT: Well, I'm curious about, I'd like to
18 follow up because I agree with you, I'm very sympathetic and
19 sorry that he has ongoing effects of COVID. I'm grateful to
20 hear that he has recovered, you know, in terms of the crisis,
21 potential crisis that could have been experienced with COVID,
22 but it seemed to me that the medical community has noted that
23 these effects are ongoing, they linger for some patients, and
24 that a lot of this is a matter of time.

25 So I'm trying to understand, Ms. Glashausser, what

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1 specific remedies you believe would be available to
2 Mr. Woodford that would -- that are not available within the
3 MDC. What medical treatment specifically are you referring to
4 that he would be able to obtain outside the MDC?

5 MS. GLASHAUSSE: Well, right now he obtains no
6 medical treatment. It's a bit of a hard question for me, Your
7 Honor, as I am not a medical professional at all but --

8 THE COURT: But you've made the statement --

9 MS. GLASHAUSSE: Yes, of course.

10 THE COURT: You've made the statement that there is
11 medical treatment that he would like to get outside of MDC
12 that would help alleviate his symptoms. So I'm just asking
13 you what specific treatment are you -- do you have in mind
14 when you make that statement to the Court.

15 MS. GLASHAUSSE: Yes, Your Honor. My understanding
16 is people that have long-term effects of the Coronavirus
17 regularly see their doctors to be monitored to make sure that
18 these lingering effects don't turn into things that are worse,
19 which the CDC website that I cited that long-term effects
20 contemplates that some of these things can worsen over time
21 even for people with seemingly not the most severe symptoms
22 that you can have from the Coronavirus. So there is that
23 aspect and there are also -- I believe that doctors are still
24 working on ways to work with patients to improve their
25 symptoms, that people go into sort of medical rehabilitation

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1 to work on improving their symptoms. With respect to, for
2 example, smell and taste, there is a whole genre of people
3 that work on the medical issue of losing your sense of smell,
4 which I had never heard of until very recently, but in that
5 New York Times article it talks about those doctors and the
6 different therapies they're using that includes exposure to
7 strong smells over time to gradually try to coax the sense to
8 reactivate. So people who have access to doctors who are in
9 the community are able to work with those professionals and
10 their individual cases to try to improve their symptoms.

11 On a more basic level, when you are sick, but as the
12 doctor at MDC noted, it is good to drink a lot of fluid. With
13 the Coronavirus people are recommended to have fresh air and
14 rec, be in not a stressful environment and none of those
15 things are available to Mr. Woodford at the MDC. So he's not
16 able to, for example, deal with the mental health difficulties
17 that these symptoms have brought on to him. It's --

18 THE COURT: Has he requested mental health consults
19 within the MDC and, if not, should I order one? I mean, has
20 he requested and not received a mental health consult to deal
21 with the obvious stress of not being able to taste or smell?

22 MS. GLASHAUSSER: Well, my understanding is it's not
23 possible really to request such things now. I haven't asked
24 Mr. Woodford if he'd like -- I would imagine he would welcome
25 any visit from any sort of medical or mental health

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1 professional is my impression from talking to him over the
2 course of his illness. I'm not sure what help MDC would be
3 able to provide, but yes, I think that would be one step that
4 could be taken.

5 The regular request procedure for any sort of thing
6 like medical and mental health has been interrupted due to the
7 Coronavirus is my understanding, so it's quite hard to get any
8 sort of visits or appointments.

9 THE COURT: Well, it may be difficult I understand
10 that, but I mean I think that the request should be made by
11 Mr. Woodford in any event. If he needs ongoing, you know, or
12 would like to get a mental health consult at least they'll be
13 aware that he has requested it. I mean, I think that when a
14 defendant presents an ongoing lack of care, courts will issue
15 orders to the MDC to get a response, but I think that the
16 request should start with the inmate certainly.

17 I think that the situation at MDC is somewhat fluid
18 depending on what the rate of infection or positive tests are,
19 but there are, as you know, medical people who are still
20 available as they must be to deal with staff issues, inmate
21 issues.

22 So I think the bigger question, frankly, and the
23 legal question before me is whether these symptoms that
24 Mr. Woodford is still experiencing, as he recovers from COVID,
25 present compelling and extraordinary circumstances for release

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1 when balanced against the other statutory factors that I must
2 consider, and whether or not he has sustained his burden by
3 clear and convincing evidence that he would not present either
4 a danger to the community or a risk of flight.

5 MS. GLASHAUSSE: I understand, Your Honor.

6 THE COURT: I understand from a humanitarian point
7 of view, certainly I want to assist him in any way that we can
8 ask the MDC to pay attention to him. I mean, I'd hate to say
9 this, but in our courthouse water comes out of our tap
10 routinely and it's brown colored. If we let it run for a good
11 five minutes it will ultimately run clear, but, you know,
12 unfortunately with these old buildings sometimes you get water
13 that is not -- that is obviously discolored. So I think
14 that -- and if he's able to get out into the general
15 population, as he apparently is, I'm having a hard time
16 understanding that your representation that MDC is denying
17 inmates in general population access to water and that they
18 may only have ice, but if that's the case I mean certainly
19 I'll ask the government to look into it and see what the
20 opportunities are for inmates to have potable water.

21 MS. GLASHAUSSE: Your Honor, I apologize. Just to
22 be clear, I'm not saying they are denying them access to
23 water, they have sinks in their room. My understanding is
24 nobody believes that is appropriate access.

25 THE COURT: All right, well, the question I was

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1 asking you was whether or not when he is in general and able
2 to get ice, whether there is also an opportunity to get fresh
3 water, you know, from the tap that's not discolored. The
4 government doesn't provide bottled water to anybody,
5 unfortunately they don't.

6 MS. GLASHAUSSER: All right, I understand, Your
7 Honor. I don't have further details on that other than what
8 I've mentioned.

9 THE COURT: But I think we need to get back to the
10 fundamental question about the burden by clear and convincing
11 evidence that Mr. Woodford does not present either a risk of
12 flight or a danger to the community.

13 I know he's stands charged --

14 MS. GLASHAUSSER: Yes, Your Honor.

15 THE COURT: -- right now of being a felon in
16 possession of a firearm and I'm familiar with the evidence
17 that led up to -- or undergirded the offense of conviction
18 and, frankly, you know, it's chilling video. Shooting
19 repeatedly at someone at point blank range, not once, not
20 twice, three times after a chase on foot at which, you know, a
21 weapon was fired at a victim who was fleeing with bystanders
22 in a public area.

23 That is a concern, and one of the factors I must
24 consider is the nature and circumstances of the crimes charged
25 and when someone has a felony record of eight prior

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1 convictions, including violent felonies involving firearms, I
2 think we have a situation where there is danger to the
3 community if he were to be released.

4 I also take note of the indication that he has
5 failed to appear on a prior occasion and a bench warrant had
6 to be issued. Here he stands convicted and faces a 78- to
7 97-month term of incarceration and I well understand that
8 these very difficult conditions at MDC would dissuade anybody
9 from returning voluntarily to prison, you know, to appear. I
10 think the risk of flight is significant here, but if you have
11 reasons to convince me that by clear and convincing evidence
12 that neither the risk of flight or the danger to community is
13 likely, I'm happy to hear from you.

14 MS. GLASHAUSSER: Thank you, Your Honor. I
15 understand Your Honor's concerns and think, however, today we
16 are not appearing before Your Honor at the beginning of
17 Mr. Woodford's case. He's already been incarcerated for 27
18 months, which is about 40 percent of the bottom of the
19 guideline range taking into account good time, and that amount
20 of time is significant in terms of both his risk of flight and
21 the concerns about the safety of the community.

22 As far as the risk of flight, when you are
23 considering a lengthy sentence that might be imposed, those
24 cases that consider those things are about cases where the
25 person is at the beginning of their case and has no time in.

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1 Mr. Woodford has already served a significant amount of time
2 and has every incentive to finish his time and then start his
3 life. He's exceedingly young. He's only 20 years old now,
4 was 18 when he was incarcerated. I know Your Honor has his
5 whole sentencing package and I'm not going to argue all of
6 those points today, but he -- in that package it's very clear
7 that he has matured and grown from when he was 18 years old
8 until 20 years old today and that he very much wants to
9 complete his obligations -- his punishment here and then move
10 on with the rest of his life, as he is very young.

11 The danger is -- risk of danger is mitigated by some
12 of those same things, the length of time that has passed and
13 how he has grown in that time. It's also mitigated by the
14 conditions that we're proposing which are GPS monitoring and
15 home detention at his grandmother's home in Pennsylvania that
16 is far removed from the violent community group that he, you
17 know, grew up in.

18 As far as the --

19 THE COURT: What about, ma'am, the risk to his
20 grandmother is pretty significant, is it not? I mean, I know
21 he's had --

22 MS. GLASHAUSSER: You mean from --

23 THE COURT: Well, if he were to live with an elderly
24 person who, I don't know how old his grandmother is, but, you
25 know, I think she faces a certain risk also. I think that

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1 once someone has COVID, generally they retain a certain amount
2 of antibodies but nobody really knows how long those are
3 effective and somebody could still possibly become reinfected
4 or pass the disease on to somebody else.

5 MS. GLASHAUSSER: Yes, Your Honor. Although I
6 believe Mr. Woodford may be -- may test negative for the
7 Coronavirus today, MDC has decided to move him back to the
8 general population. I don't know how they made that decision,
9 but I'm not sure that Mr. Woodford would still be contagious
10 today, however, when I submitted my papers and thought this
11 through, he certainly was.

12 Mr. Woodford's grandmother has -- she lives in a
13 single family home that has the ability for Mr. Woodford to
14 live in a room with a bathroom that is completely -- that
15 would not be the same bathroom that his grandmother would be
16 using so there is this space in the home to quarantine
17 separately.

18 And, additionally, his grandmother is not -- I don't
19 believe she is elderly, she still works full time. I
20 apologize, I don't have her precise age before me but I could
21 probably find it. So I'm not sure that she is of the highest
22 risk and she works, my understanding is, within a medical
23 facility as it is. So she is fully cognizant of any of these
24 risks and is willing, very much willing and would welcome the
25 opportunity to have him come and live in her home.

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1 THE COURT: All right --

2 MS. GLASHAUSSER: Just briefly.

3 THE COURT: -- anything else? Yes, go ahead.

4 MS. GLASHAUSSER: One more thing, Your Honor. Your
5 Honor mentioned prior convictions and the bench warrant. I
6 would just say those are from when Mr. Woodford was a minor.
7 And although they may not be that long ago in terms of years
8 because Mr. Woodford is so young still today, they really are
9 a long time ago in terms of his maturity and growth.

10 THE COURT: Thank you.

11 Does the government want to be heard?

12 MS. REID: Your Honor, I think the Court has
13 articulated many of the points that I would make. I just want
14 to reiterate that we think this case really comes down to the
15 facts leading up to the defendant's conviction, which were, as
16 the Court mentioned, extremely egregious and his history
17 which, as the Court mentioned, includes that bench warrant
18 while he was waiting to be sentenced for eight prior robbery
19 convictions. And this is in the Court's -- the government's
20 letter and I know the Court is aware of it, but while he was
21 out on that bench warrant he ended up being picked up by law
22 enforcement and was in possession of an imitation firearm and
23 actual real ammunition, which is just another reason to
24 believe that he, at that time and still, was a danger to the
25 community before he committed this attempted murder of another

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1 person, as the Court said, in a crowded area in Brooklyn.

2 And I think in light of those facts, the
3 circumstances of the defendant's condition, although the
4 government of course is sympathetic to anyone with COVID and
5 the defendant suffering from that, it's just not sufficient,
6 Your Honor, to be a compelling reason or to be clear and
7 convincing to amount to an exceptional circumstance justifying
8 his release.

9 And I think the issue, Your Honor, with the notion
10 that his medical treatment would be remarkably different were
11 he released, I don't think that the evidence has really been
12 provided for that. The loss of taste and smell I've read is
13 in 80 percent of COVID cases. I don't believe the majority of
14 those people are able to be in a rehab facility, I don't see
15 how the defendant's case would be different. I think, you
16 know, as the Court said, this is -- it's a difficult illness
17 to work with and, unfortunately, it just takes time. But the
18 defendant is being seen by MDC staff appropriately. As the
19 Court said, he's been seen by doctors, he's back in general
20 population, and in light of all of the circumstances it's the
21 government's position that there is just absolutely nothing
22 here that rises to a level that justifies releasing him that's
23 been demonstrated.

24 THE COURT: All right. Ms. Glashausser, did you
25 have anything else you wanted to add?

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1 MS. GLASHAUSSER: No, Your Honor, thank you.

2 THE COURT: I am sympathetic to Mr. Woodford's
3 lingering symptoms, I am also glad that he was able to recover
4 and, fortunately, his youth and prior physical condition
5 probably assisted him with avoiding more serious consequences
6 of the COVID-19 virus, but I am trying to look for and have
7 looked carefully for facts that would constitute a compelling
8 reason to release Mr. Woodford pending his sentencing.

9 3145 Subsection (i)(4) would require that a
10 temporary release be based upon a judicial finding that the
11 release is necessary for preparation of a person's defense or
12 another compelling reason. Preparation for the defense is not
13 at issue because Mr. Woodford has pled guilty and stands
14 convicted and need not prepare a defense at this point, so
15 what are the compelling reasons:

16 We have ongoing symptoms of the COVID-19 virus that
17 are common to many people, that don't compel or don't
18 constitute life-threatening conditions. They are certainly
19 troubling for anybody and I would agree would probably cause a
20 great deal of stress to somebody who experiences them. He's
21 got ongoing fatigue and difficulty exercising, to the extent
22 he may have been able to do so before he became ill, but he is
23 in a facility where his medical condition is on MDC's radar.
24 It appears that he is getting -- being monitored, and in terms
25 of the stress that he may be feeling, the mental health aspect

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1 of this, certainly he can and should ask for a consult.

2 Now, are there exceptional circumstances here and
3 has Mr. Woodford justified by clear and convincing evidence
4 that he is not either a danger to the community or nor does he
5 present a risk of flight, and if we look at the bail statute
6 and the factors that I must consider, I started to review the
7 nature and circumstances of the offense here. We have many
8 cases where felons are in possession of a firearm, some of
9 those individuals have one or two prior felonies, some have
10 multiple prior felonies. Here, Mr. Woodford had eight. The
11 fact that he was young and that he may have matured while in
12 custody for 27 months at MDC, but the circumstances of this
13 particular offense were, as I said, they were chilling and
14 horrifying actually to watch. And this victim was fleeing for
15 his life and fell on the ground and was shot multiple times on
16 three separate approaches and retreats and approaches. He
17 still lives with bullets in his body and his life is forever
18 changed obviously.

19 Mr. Woodford, despite his youth and despite the fact
20 that he was young when he committed these other serious
21 felonies, they were in fact serious felonies and some of them
22 did involve firearms, and the history of a bench warrant
23 indicates that when a judge put trust in Mr. Woodford in the
24 past that he would reappear and he didn't, a bench warrant had
25 to be issued. This doesn't happen that often but when it does

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1 happen one hopes that when a person is apprehended on a bench
2 warrant for failure to appear, that they will not be in
3 possession of ammunition or a weapon. I accept the
4 representation that this was an imitation firearm, but there
5 is no dispute that the ammunition was real ammunition.

6 The danger posed to the community is significant in
7 this case. And certainly I will be reading and considering
8 carefully the arguments by defense counsel that he has matured
9 and taken steps to rehabilitate himself and certainly his time
10 in custody thus far will be credited against any sentence that
11 he will receive, but the last factor, that is the weight of
12 the evidence against Mr. Woodford, as we know, is quite heavy.
13 The videotaped evidence of Mr. Woodford in possession of a
14 firearm and using it, frankly, to attempt to kill someone.

15 So given those factors I cannot find a legal basis
16 to grant Mr. Woodford release. I cannot find that the ongoing
17 COVID symptoms constitute extraordinary circumstances or
18 override the clear risk of danger to the community and risk
19 that he will not appear. He does face a significant sentence
20 because of this conviction. And to the extent Ms. Glashausser
21 argued that he's anxious to fulfill the sentence and move on
22 with his life, I think those are positive signs that, yes, he
23 is young, he has a future, he will put this behind him and
24 move forward with a life in a law-abiding way and if, upon his
25 release, his grandmother is still willing to provide a place

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1 for him to live away from the areas and the contacts that led
2 to this particular conviction, I think that's a very positive
3 thing and it's a very generous thing on her part, but until he
4 is sentenced and serves his time, I think that his release is
5 not warranted under the law.

6 He is scheduled for sentencing on February 26th at
7 11 o'clock a.m. and I am assuming we will proceed.

8 Ms. Glashausser, I think you've indicated you'd like to
9 proceed in person. If it is safe to do so we will, otherwise
10 we'll probably proceed by video conference. I don't know what
11 the COVID pandemic will bring with regard to ongoing exposure
12 and disease rates, but I would ask the government also to
13 please look into Mr. Woodford's ongoing needs or perhaps his
14 benefiting from some mental health treatment and to find out
15 and confirm that he does have access to potable water that is
16 not simply ice but water that runs clear from the tap and
17 appears to be potable.

18 So for the foregoing reasons I, respectfully, deny
19 Mr. Woodford's motion to be released pending his sentencing.

20 Is there anything else that I should address at this
21 time?

22 MS. REID: Not from the government, Your Honor.

23 THE COURT: I'm sorry, not from the government?

24 MS. GLASHAUSSER: Sorry, Your Honor. Yes, Your
25 Honor, this is Allegra Glashausser. Just in terms of

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1 Mr. Woodford's sentencing, I do anticipate that he will still
2 ask to have an in-person sentencing, so in the event that it's
3 not available for us on February 26th I'll submit a letter to
4 the Court.

5 THE COURT: All right. Well, it will be up to him
6 whether -- we can go forward by video and it may be that
7 that's a good idea, but if we can go forward safely without,
8 you know, risking additional exposures to marshals and others,
9 we will go forward in person.

10 MS. GLASHAUSSER: Thank you, Your Honor.

11 THE COURT: All right. Thank you. Thank you to the
12 court reporter and MDC. The MDC can be advised that we are
13 now adjourned and we can terminate this call. Thank you.

14 (Matter concluded.)

15
16 * * * * *

17
18 I certify that the foregoing is a correct transcript from the
19 record of proceedings in the above-entitled matter.

20 s/ Georgette K. Betts

January 28, 2021

21 GEORGETTE K. BETTS

DATE